

ORIGINAL

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 Company

UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA

EVEREST INDEMNITY INSURANCE  
 COMPANY,

Plaintiff,

v.

AVENTINE-TRAMONTI  
 HOMEOWNERS ASSOCIATION, a  
 Nevada nonprofit corporation; and DOE  
 HOMEOWNERS' 1 through 500, TOWN  
 CENTER VENTURES, LLC, a Nevada  
 limited liability company; CAMS  
 CONSTRUCTION CORPORATION, a  
 Nevada corporation; ACCESS  
 TECHNOLOGIES; AMERICAN  
 ASPHALT & GRADING CO.;  
 AMPAM/RCR PLUMBING; ARC  
 ELECTRIC; AVANTI DOOR GROUP;  
 BAIR'S CARPET; BRANDON IRON,  
 INC.; C&W CLEANING; CENTURION  
 SECURITY SYSTEM; CLOSET  
 MASTERS; COAST WET PLUMBING,  
 INC.; CONSTANT LIGHTING;  
 CUSTOM HEALTH DISTRIBUTORS,  
 INC.; D & L FRAMING; DAN  
 BRADLEY'S GLASS SHOP, INC.;

CASE NO.

**COMPLAINT IN INTERPLEADER AND  
 FOR DECLARATORY RELIEF**

[28 U.S.C. § 1335; 28 U.S.C. § 1332 (a)(1);  
 F.R.Civ.P. 22; 28 U.S.C. §§ 2201-2202]

DESERT RAIN- ENVIRO SCAPE;  
DISTINCTIVE FRAMING;  
DISTINCTIVE MARBLE, INC.;  
JOHNSON ELECTRIC; H & B  
CONSTRUCTION; HARRISON DOOR  
COMPANY; HIGH ENERGY  
ELECTRIC; JAYLEE DEVELOPMENT,  
LLC.; KEEGAN ENGINEERING, P.C.;  
MASONRY BY BOB MARKS; METRO  
ELECTRIC; MOTIVATIONAL  
SYSTEMS, INC.; NEVADA GYPSUM  
FLOORS, INC; NEVADA STAIRS, INC.;  
NEVADA STATE PLASTERING; NEW  
CRETE; NORPAC CONSTRUCTION  
LLC; PACIFIC DRYWALL & PAINT;  
PEARSON TRENCHING; PERSONAL  
TOUCH INTERIORS; PIONEER  
OVERHEAD DOORS; PIPIES PAVING;  
POOLS BY GRUBE; QUALITY  
CABINETS; R. W. STUCCO, INC.;  
RISING SUN PLUMBING, LLC.; SAN  
GABRIEL, INC.; SEARS CONTRACT  
SALES; SKYLINE INSULATION;  
STATE INSULATION; SUMMIT  
DRYWALL & PAINT; SUNRISE  
MECHANICAL, INC.; SUPERIOR TILE  
& MARBLE, INC.; UNITED RENTALS  
HIGHWAY TECH; VAZZANA  
UNDERGROUND; WEST COAST  
FRAMING; WESTCOR WINDOWS &  
PATIO DOOR; WESTERN PIPELINE  
CONSTRUCTION CORP.; WILLIS  
ROOFING CO., INC.; ZEPEDA BROS.  
PAINT & DRYWALL

Defendants.

Plaintiff, Everest Indemnity Insurance Company ("EIIC" or "Plaintiff") alleges as follows:

# **I.** **JURISDICTION AND VENUE**

1. Jurisdiction exists pursuant to Rule 22 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1332 (a)(1) and 28 U.S.C. §§ 2201–2202. Plaintiff, Everest Indemnity Insurance Company, is a corporation duly incorporated in the state of Delaware and with its principal place of business in Liberty Corner, New Jersey. Defendant Aventine-Tramonti Homeowners Association is a Nevada non-profit corporation, and having its principal place of business within



1 the City of Las Vegas, County of Clark, State of Nevada and this judicial district. The amount of  
2 the money involved in this interpleader action is approximately \$850,000 which exceeds \$75,000.

3 2. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1335. EIIC  
4 is informed and believes and thereon alleges that defendant Pioneer Overhead Door Sales is a  
5 citizen of State of Utah. EIIC is also informed and believes and thereon alleges that defendant  
6 Distinctive Marble, Inc. is a citizen of the State of Arizona. EIIC is also informed and believes  
7 and thereon alleges that each of defendants RCR Plumbing and Mechanical, Inc., Motivational  
8 System, Inc., and Vazzana Underground Construction, Inc., is a citizen of the State of California.  
9 EIIC is informed and believes and thereon alleges that all other defendants (including the  
10 Association) are citizens of the state of Nevada. Further, the amount in controversy is  
11 approximately \$850,000 which exceeds \$500. Federal courts have subject matter jurisdiction  
12 where the stake consists of money or property valued at \$500 or more, and diversity of citizenship  
13 exists between any two claimants. (28 U.S.C. § 1335)

14 3. Venue is proper in this Court pursuant to 28 U.S.C. § 1397 and 28 U.S.C. § 1391.  
15 Defendants are subject to personal jurisdiction in this Court's district. Further, the events  
16 underlying this action took place within this Court's district.

## 17 **II.**

### 18 **THE PARTIES**

19 4. At all times herein mentioned, EIIC was and is a corporation duly incorporated in  
20 the state of Delaware and with its principal place of business in Liberty Corner, New Jersey.

21 5. At all times herein mentioned, EIIC was and is a corporation duly authorized to  
22 conduct business as an insurance company in the state of Nevada.

23 6. EIIC is informed and believes and thereon alleges that at all times herein  
24 mentioned, defendant **Aventine-Tramonti Homeowners Association** (the "Association") was  
25 and is a Nevada non-profit corporation organized and existing under and by virtue of the laws of  
26 the State of Nevada, and having its principal place of business within the City of Las Vegas, State  
27 of Nevada. EIIC is further informed and believes and thereon alleges that at all times herein  
28 mentioned, the Association is duly authorized to conduct business as a homeowners association in

1 the State of Nevada and to sue and be sued in a representative capacity under the laws of State of  
2 Nevada.

3 7. EIIC alleges that the true names, capacities, and identities of DOE  
4 HOMEOWNER defendants 1-500 Inclusive, whether individual, partnership, corporate, or  
5 otherwise, are at the present time unknown to EIIC, and therefore sues said DOE HOMEOWNER  
6 defendants by such fictitious names. EIIC is informed and believes and thereon alleges that each  
7 of said DOE HOMEOWNER defendants has some interest in the interpleaded funds referenced  
8 herein. At such time as the true names, capacities, and identities of said DOE HOMEOWNER  
9 defendants become known, EIIC will seek leave of the Court to amend this complaint  
10 accordingly.

11 8. EIIC is informed and believes and thereon alleges that at all times herein  
12 mentioned, defendant **Town Center Ventures, LLC** was and is a business entity doing business  
13 in the City of Las Vegas, State of Nevada.

14 9. EIIC is informed and believes and thereon alleged that at all times herein  
15 mentioned, defendant **Cams Construction Corporation** was and is a business entity doing  
16 business in the City of Las Vegas, State of Nevada.

17 10. EIIC is informed and believes and thereon alleged that at all times herein  
18 mentioned, defendant **Pageantry Communities, Inc.** was and is a business entity doing business  
19 in the City of Las Vegas, State of Nevada.

20 11. EIIC is informed and believes and thereon alleged that at all times herein  
21 mentioned, defendant **Pageantry Development Corp.** was and is a business entity doing  
22 business in the City of Las Vegas, State of Nevada.

23 12. EIIC is informed and believes and thereon alleged that at all times herein  
24 mentioned, defendant **Pageantry Realty, Inc.** was and is a business entity doing business in the  
25 City of Las Vegas, State of Nevada.

26 13. EIIC is informed and believes and thereon alleged that at all times herein  
27 mentioned, defendant **Premier Construction Corp.** was and is a business entity doing business  
28 in the City of Las Vegas, State of Nevada.



14. EIIC is informed and believes and thereon alleged that at all times herein mentioned, defendant **Pageantry Residential, LLC** was and is a business entity doing business in the City of Las Vegas, State of Nevada.

15. EIIC is informed and believes and thereon alleged that at all times herein mentioned, defendant **Access Technologies** was and is a business entity doing business in the City of Las Vegas, State of Nevada.

16. EIIC is informed and believes and thereon alleged that at all times herein mentioned, defendant **American Asphalt & Grading** was and is a business entity doing business in the City of Las Vegas, State of Nevada.

17. EIIC is informed and believes and thereon alleged that at all times herein mentioned, defendant **AMPAM/RCR Plumbing** was and is a business entity doing business in the City of Las Vegas, State of Nevada.

18. EIIC is informed and believes and thereon alleged that at all times herein mentioned, defendant **Arc Electric** was and is a business entity doing business in the City of Las Vegas, State of Nevada.

19. EIIC is informed and believes and thereon alleged that at all times herein mentioned, defendant **Avanti Door Group** was and is a business entity doing business in the City of Las Vegas, State of Nevada.

20. EIIC is informed and believes and thereon alleged that at all times herein mentioned, defendant **Bair's Carpet** was and is a business entity doing business in the City of Las Vegas, State of Nevada.

21. EIIC is informed and believes and thereon alleged that at all times herein mentioned, defendant **Brandon Iron, Inc.** was and is a business entity doing business in the City of Las Vegas, State of Nevada.

22. EIIC is informed and believes and thereon alleged that at all times herein mentioned, defendant **C & W Cleaning** was and is a business entity doing business in the City of Las Vegas, State of Nevada.

23. EIIC is informed and believes and thereon alleged that at all times herein

1 mentioned, defendant **Centurion Security System** was and is a business entity doing business in  
2 the City of Las Vegas, State of Nevada.

3 24. EIIC is informed and believes and thereon alleged that at all times herein  
4 mentioned, defendant **Closet Masters** was and is a business entity doing business in the City of  
5 Las Vegas, State of Nevada.

6 25. EIIC is informed and believes and thereon alleged that at all times herein  
7 mentioned, defendant **Coast West Plumbing, Inc.** was and is a business entity doing business in  
8 the City of Las Vegas, State of Nevada.

9 26. EIIC is informed and believes and thereon alleged that at all times herein  
10 mentioned, defendant **Constant Lighting** was and is a business entity doing business in the City  
11 of Las Vegas, State of Nevada.

12 27. EIIC is informed and believes and thereon alleged that at all times herein  
13 mentioned, defendant **Custom Hearth Distributors, Inc.** was and is a business entity doing  
14 business in the City of Las Vegas, State of Nevada.

15 28. EIIC is informed and believes and thereon alleged that at all times herein  
16 mentioned, defendant **D & L Framing** was and is a business entity doing business in the City of  
17 Las Vegas, State of Nevada.

18 29. EIIC is informed and believes and thereon alleged that at all times herein  
19 mentioned, defendant **Dan Bradley's Glass Shop, Inc.** was and is a business entity doing  
20 business in the City of Las Vegas, State of Nevada.

21 30. EIIC is informed and believes and thereon alleged that at all times herein  
22 mentioned, defendant **Desert Rain – Enviro Scape** was and is a business entity doing business in  
23 the City of Las Vegas, State of Nevada.

24 31. EIIC is informed and believes and thereon alleged that at all times herein  
25 mentioned, defendant **Distinctive Framing** was and is a business entity doing business in the  
26 City of Las Vegas, State of Nevada.

27 32. EIIC is informed and believes and thereon alleged that at all times herein  
28 mentioned, defendant **Distinctive Marble, Inc.** was and is a business entity doing business in the



1 City of Las Vegas, State of Nevada.

2 33. EIIC is informed and believes and thereon alleged that at all times herein  
3 mentioned, defendant **H & B Construction** was and is a business entity doing business in the  
4 City of Las Vegas, State of Nevada.

5 34. EIIC is informed and believes and thereon alleged that at all times herein  
6 mentioned, defendant **Harrison Door Company** was and is a business entity doing business in  
7 the City of Las Vegas, State of Nevada.

8 35. EIIC is informed and believes and thereon alleged that at all times herein  
9 mentioned, defendant **High Energy Electric** was and is a business entity doing business in the  
10 City of Las Vegas, State of Nevada.

11 36. EIIC is informed and believes and thereon alleged that at all times herein  
12 mentioned, defendant **Jaylee Development LLC** was and is a business entity doing business in  
13 the City of Las Vegas, State of Nevada.

14 37. EIIC is informed and believes and thereon alleged that at all times herein  
15 mentioned, defendant **Johnson Electric** was and is a business entity doing business in the City of  
16 Las Vegas, State of Nevada.

17 38. EIIC is informed and believes and thereon alleged that at all times herein  
18 mentioned, defendant **Keegan Engineering P.C.** was and is a business entity doing business in  
19 the City of Las Vegas, State of Nevada.

20 39. EIIC is informed and believes and thereon alleged that at all times herein  
21 mentioned, defendant **Masonry By Bob Marks** was and is a business entity doing business in the  
22 City of Las Vegas, State of Nevada.

23 40. EIIC is informed and believes and thereon alleged that at all times herein  
24 mentioned, defendant **Metro Electric** was and is a business entity doing business in the City of  
25 Las Vegas, State of Nevada.

26 41. EIIC is informed and believes and thereon alleged that at all times herein  
27 mentioned, defendant **Motivational Systems, Inc.** was and is a business entity doing business in  
28 the City of Las Vegas, State of Nevada.

42. EIIC is informed and believes and thereon alleged that at all times herein mentioned, defendant **Nevada Gypsum Floors, Inc.** was and is a business entity doing business in the City of Las Vegas, State of Nevada.

43. EIIC is informed and believes and thereon alleged that at all times herein mentioned, defendant **Nevada Stairs, Inc.** was and is a business entity doing business in the City of Las Vegas, State of Nevada.

44. EIIC is informed and believes and thereon alleged that at all times herein mentioned, defendant **Nevada State Plastering** was and is a business entity doing business in the City of Las Vegas, State of Nevada.

45. EIIC is informed and believes and thereon alleged that at all times herein mentioned, defendant **New Crete** was and is a business entity doing business in the City of Las Vegas, State of Nevada.

46. EIIC is informed and believes and thereon alleged that at all times herein mentioned, defendant **Norpac Construction LLC** was and is a business entity doing business in the City of Las Vegas, State of Nevada.

47. EIIC is informed and believes and thereon alleged that at all times herein mentioned, defendant **Pacific Drywall & Paint** was and is a business entity doing business in the City of Las Vegas, State of Nevada.

48. EIIC is informed and believes and thereon alleged that at all times herein mentioned, defendant **Pearson Trenching** was and is a business entity doing business in the City of Las Vegas, State of Nevada.

49. EIIC is informed and believes and thereon alleged that at all times herein mentioned, defendant **Personal Touch Interiors** was and is a business entity doing business in the City of Las Vegas, State of Nevada.

50. EIIC is informed and believes and thereon alleged that at all times herein mentioned, defendant **Pioneer Overhead Doors** was and is a business entity doing business in the City of Las Vegas, State of Nevada.

51. EIIC is informed and believes and thereon alleged that at all times herein



1 mentioned, defendant **Pipes Paving** was and is a business entity doing business in the City of Las  
2 Vegas, State of Nevada.

3 52. EIIC is informed and believes and thereon alleged that at all times herein  
4 mentioned, defendant **Pools by Grube** was and is a business entity doing business in the City of  
5 Las Vegas, State of Nevada.

6 53. EIIC is informed and believes and thereon alleged that at all times herein  
7 mentioned, defendant **Quality Cabinets** was and is a business entity doing business in the City of  
8 Las Vegas, State of Nevada.

9 54. EIIC is informed and believes and thereon alleged that at all times herein  
10 mentioned, defendant **R. W. Stucco, Inc.** was and is a business entity doing business in the City  
11 of Las Vegas, State of Nevada.

12 55. EIIC is informed and believes and thereon alleged that at all times herein  
13 mentioned, defendant **Rising Sun Plumbing** was and is a business entity doing business in the  
14 City of Las Vegas, State of Nevada.

15 56. EIIC is informed and believes and thereon alleged that at all times herein  
16 mentioned, defendant **San Gabriel, Inc.** was and is a business entity doing business in the City of  
17 Las Vegas, State of Nevada.

18 57. EIIC is informed and believes and thereon alleged that at all times herein  
19 mentioned, defendant **Sears Contract Sales** was and is a business entity doing business in the  
20 City of Las Vegas, State of Nevada.

21 58. EIIC is informed and believes and thereon alleged that at all times herein  
22 mentioned, defendant **Skyline Insulation** was and is a business entity doing business in the City  
23 of Las Vegas, State of Nevada.

24 59. EIIC is informed and believes and thereon alleged that at all times herein  
25 mentioned, defendant **State Insulation** was and is a business entity doing business in the City of  
26 Las Vegas, State of Nevada.

27 60. EIIC is informed and believes and thereon alleged that at all times herein  
28 mentioned, defendant **Summit Drywall & Paint** was and is a business entity doing business in

1 the City of Las Vegas, State of Nevada.

2 61. EIIC is informed and believes and thereon alleged that at all times herein  
3 mentioned, defendant **Sunrise Mechanical, Inc.** was and is a business entity doing business in  
4 the City of Las Vegas, State of Nevada.

5 62. EIIC is informed and believes and thereon alleged that at all times herein  
6 mentioned, defendant **Superior Tile & Marble, Inc.** was and is a business entity doing business  
7 in the City of Las Vegas, State of Nevada.

8 63. EIIC is informed and believes and thereon alleged that at all times herein  
9 mentioned, defendant **United Rentals Highway Tech** was and is a business entity doing business  
10 in the City of Las Vegas, State of Nevada.

11 64. EIIC is informed and believes and thereon alleged that at all times herein  
12 mentioned, defendant **Vazzana Underground** was and is a business entity doing business in the  
13 City of Las Vegas, State of Nevada.

14 65. EIIC is informed and believes and thereon alleged that at all times herein  
15 mentioned, defendant **West Coast Framing** was and is a business entity doing business in the  
16 City of Las Vegas, State of Nevada.

17 66. EIIC is informed and believes and thereon alleged that at all times herein  
18 mentioned, defendant **WestCor Windows & Patio Door** was and is a business entity doing  
19 business in the City of Las Vegas, State of Nevada.

20 67. EIIC is informed and believes and thereon alleged that at all times herein  
21 mentioned, defendant **Western Pipeline Construction Corp.** was and is a business entity doing  
22 business in the City of Las Vegas, State of Nevada.

23 68. EIIC is informed and believes and thereon alleged that at all times herein  
24 mentioned, defendant **Willis Roofing Co., Inc.** was and is a business entity doing business in the  
25 City of Las Vegas, State of Nevada.

26 69. EIIC is informed and believes and thereon alleged that at all times herein  
27 mentioned, defendant **Zepeda Bros. Paint & Drywall** was and is a business entity doing  
28 business in the City of Las Vegas, State of Nevada.



70. EIIC alleges that the true names, capacities, and identities of DOE defendants 501-600 Inclusive, whether individual, partnership, corporate, or otherwise, are at the present time unknown to EIIC, and therefore sue said DOE defendants by such fictitious names. EIIC is informed and believes and thereon alleges that each of said DOE defendants has some interest in the interpleaded funds referenced herein. At such time as the true names, capacities, and identities of said DOE defendants become known, EIIC will seek leave of the Court to amend this Cross-complaint accordingly.

### III. FACTUAL BACKGROUND

#### A. The Policy

71. EIIC issued an Owner Controlled Insurance Program policy (policy no. 5000000253-031) effective May 15, 2003 through May 15, 2006 (the "Policy" or the "Wrap Policy") in connection with a construction project designated project identified in the Policy as Fort Apache Road and Gilcrease Avenue, Las Vegas, Nevada (the "Project.") (Attached to this Complaint as Exhibit "A" and incorporated by reference herein is a copy of the Policy<sup>1</sup>.)

72. EIIC is informed and believes and thereon alleges that there are no other primary or excess insurance policies obtained by Pageantry for the Project.

73. The Policy provides commercial general liability coverage with a \$1 million limit subject to a \$50,000 "Self Insured Retention."

74. **The Policy is subject to form ECG 25 508 07 02 "Defense Expenses Within Limits" which provides that payment of "defense expenses" will reduce the limits of insurance by that amount. Thus, the maximum that EIIC will pay in connection with the claims for this Project for "defense expenses" and indemnity combined is \$1,000,000.**

75. The "LIMITS OF INSURANCE" provisions of the Policy's Commercial General Liability ("CGL") coverage Form (CG 00 01 10 01) state that the Limits of Insurance shown in the Declarations "and the rules below," fix the most EIIC will pay regardless of the number of

<sup>1</sup> Certain premium information which constitutes EIIC's proprietary information has been redacted. Those pages of the Policy where premium information has been redacted is marked "REDACTED".

insureds, claims made or “suits” brought, or persons or organizations making claims or bringing “suits.”

76. The Each Occurrence limit is the most EIIC will pay for the sum of Damages under Coverage A and Medical Expenses under Coverage C because of all “bodily injury” and “property damage” arising out of any one “occurrence.”

**B. The Insureds**

77. The first named insured under the Policy is Town Center Ventures LLC (“TCV”) who acted as the developer and general contractor. All the work was performed by contractors and subcontractors on TCV’s behalf. Other named insureds are Cams Construction Corp, Pageantry Communities, Inc., Pageantry Development, Pageantry Reality, Inc., Pageantry Residential, LLC, and Premier Construction Corp (collectively referred to as “Pageantry”) and **all contractors and subcontractors enrolled** in the Wrap Policy who are listed as “Other Named Insureds on the Policy. (True and correct copies of the lists of all the contractors and subcontractors enrolled in the Policy are attached hereto as Exhibits “B” and “C” which may contain overlapping information.)

**C. The Underlying Lawsuit**

78. On or about January 15, 2008, the Association filed a complaint in the Nevada State Court (case no. A555328, District Court, County of Clark, State of Nevada) against Town Center Ventures LLC and Cams Construction, *Aventine-Tramonti Homeowners Association et al. v. Town Center Ventures et al.* (“Underlying Lawsuit”) in connection with the various alleged construction defects and deficiencies in the Project.

79. EIIC undertook the defense of its insureds named defendants in the Underlying Lawsuit.

80. EIIC is informed and believes and thereon alleges that the \$50,000 Self Insured Retention has been satisfied.

81. As of the date of filing this complaint in interpleader, after satisfaction of the Self-Insured Retention, the insureds (named defendants in the Underlying Lawsuit), have incurred approximately \$150,000 in defense fees and costs. Those legal bills have eroded the limits of



1 the Policy; leaving approximately \$850,000 in available policy limits.

2 82. Shortly after filing of this Complaint and upon this Court's order and approval,  
3 EIIC will deposit the sum of \$850,000 with the Court registry. EIIC will do a full accounting in  
4 ninety (90) days. In the event that the total amount of legal bills paid by EIIC is determined to  
5 be less than \$150,000, EIIC will deposit with the Court the sum representing the difference  
6 between \$150,000 and the total amount of legal fees paid by EIIC.

7 **IV.**

8 **THERE ARE COMPETING CLAIMS TO THE SAME FUNDS**

9 83. Since October 2007, the Association has made several demands for the EIIC  
10 policy limits.

11 84. Since October 2007, EIIC has made several settlement offers to the Association  
12 where EIIC agreed to tender the remainder of its policy limits in exchange for a complete and  
13 full release of all of its insureds under the Policy. The Association has rejected all those offers  
14 maintaining that the value of the Association case (*i.e.*, the Underlying Lawsuit) is well over  
15 \$7,000,000.00 and probably could even exceed \$10,000,000.

16 85. Since October 2007, EIIC has cooperated with the Association and refrained from  
17 filing a complaint in interpleader allowing the Association to file the Underlying Lawsuit to  
18 conduct limited discovery to obtain information regarding other insurance assets of the  
19 contractors and subcontractors enrolled in the Wrap Policy and involved in the construction of  
20 the Project.

21 86. EIIC is informed and believes and thereon alleges that the Association has  
22 obtained the information regarding other insurance assets of the contractors and subcontractors  
23 enrolled in the Wrap Policy and involved in the construction of the Project as set forth in the  
24 preceding paragraph.

25 87. EIIC is informed and believes and thereon alleges that in the Underlying Lawsuit,  
26 no allocation of liability (among the various contractor and subcontractors) has been made.

27 88. In February 2009, the Association rejected a mediator's proposal in the Underlying  
28 Lawsuit, which required, among other things, the payment of the remainder of EIIC's policy

limits in exchange for the Association's execution of release and covenant not to execute against all the insureds under the Policy, except to the extent of the insureds' other available insurance assets.

89. Even though the contractors and subcontractors enrolled in the Policy are not currently named as defendants in the Underlying Lawsuit, all of them are, and remain, potentially liable for the damages sought in the Underlying Lawsuit by the Association and any future lawsuits by individual homeowners or class actions by the homeowners. This is because the amount of damages claimed by the Association in the Underlying Lawsuit (*i.e.*, \$7-\$10 million) far exceeds the insurance proceeds available under the Wrap Policy. Further, several demands for policy limits have been made by the Association which impact the rights of all the insureds under the Wrap Policy and EIIC's obligations to all of its insureds. Consequently, all the insureds enrolled in the Wrap Policy (who are named herein as defendants) have actual or potential claim to the proceeds of the Policy.

90. The Underlying Lawsuit and the Association's claim for \$7-\$10 million in construction damages for construction defects and deficiencies therefore present potential "bad faith" exposure for EIIC as to its multiple insureds. Where there are several co-insureds, the insurer owes duties of defense and indemnification to each up to the stated policy limits. Where claims exceeding policy limits are asserted against several co-insureds, an insurer's payment of its policy limits to settle claims against one insured does not necessarily discharge its duties of defense and indemnification to the others. An insurer owes the duty of good faith and fair dealing to each of its insureds, and cannot favor the interests of one insured over the other.

91. EIIC therefore faces multiple actual and/or potential claims to the applicable limits of its Policy by two or more persons which may subject EIIC to multiple liabilities, which makes Interpleader necessary.

#### V. **FIRST CAUSE OF ACTION FOR INTERPLEADER**

(Against All Defendants)

92. EIIC refers to each and every allegation in paragraphs 1-90 above and incorporates



those paragraphs set forth in full herein.

93. EIIC is in possession of the remaining **\$850,000** of EIIC's applicable **\$1 million** policy limits.

94. Pursuant to the facts set forth above, EIIC is unable to determine the validity of the above-referenced conflicting actual/potential demands by the insureds and the claimants named as defendants herein, and cannot determine or allocate the amount(s) to which each of the claimant is entitled or to whom said money belongs.

95. EIIC claims no interest in the remaining \$850,000 of EIIC's applicable \$1 million policy limits.

96. Upon this Court's approval and order and shortly after filing of this Complaint, EIIC shall deposit the aforesaid remaining **\$850,000** of EIIC's applicable \$1 million with the clerk of this Court pursuant to 28 U.S.C. § 1335(a)(2).

97. Plaintiff has incurred cost and reasonable attorneys fees in connection with these proceedings and may incur additional costs and fees hereafter.

## VI. SECOND CAUSE OF ACTION FOR DECLARATORY RELIEF

(Against All Defendants)

98. EIIC refers to each and every allegation in paragraphs 1-96 above and incorporates those paragraphs set forth in full herein.

99. An actual controversy has arisen between the parties hereto with respect to the amounts due, or amounts to be allocated, to each defendant under the Policy. Plaintiff is entitled to have this Court decide the legal rights and obligations of Plaintiff and defendants and each of them and to have this Court render its judgment of declaratory relief regarding the amounts due, or the amounts to be allocated, under the Policy.

WHEREFORE EIIC prays for judgment as follows:

(1) That defendants and each of them be ordered to interplead, litigate and settle among themselves their rights to the money due under the Policy;

(2) That Plaintiff be discharged from liability to each of said defendants with respect

1 to said money or property;

2 (3) That this Court enter its judgment of declaratory relief regarding the amount due,  
3 or amount to be allocated, to each of defendants, under the Policy;

4 (4) That Plaintiff be awarded costs and reasonable attorneys' fees to be paid to  
5 Plaintiff from the funds deposited with the clerk of the Court as aforesaid; and

6 (5) For such other and further relief the Court deems just.

7  
8 Dated: August 26, 2009

ROPER, MAJESKI, KOHN & BENTLEY

9  
10 By: 

11 BRIAN VANDERHOOF  
12 Attorneys for Plaintiff EVEREST  
INDEMNITY INSURANCE COMPANY

13 Dated: August 28, 2009

14 JOHNS & DURRANT LLP

15  
16 By: 

17 NEIL B. DURRANT  
18 Attorneys for Plaintiff EVEREST  
19 INDEMNITY INSURANCE COMPANY  
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